76-482

Supreme Court, U. S.
FILED
OCT 5 1976
MICHAEL RODAK, JR., CLERK

IN THE UNITED STATES SUPREME COURT

FRANK A. RAMIREZ v. THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO REVIEW
A JUDGMENT OF
THE UNITED STATES COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO REVIEW
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Comes now MICHAEL C. FERGUSON who respectfully represents to this Court the following (as required by Paragraph 1 of Rule 23 of this Court).

a) The opinion containing the judgment sought to be reviewed herein is reported at: ___Fed 2nd___ (not yet reported)

207 Ct. Claims___ (not yet reported)

38 AFTRA 2nd ¶76-5402 (Prentis Hall)

76-2 USTC ¶9537 (CCH)

A true copy of the official report of the Court of Claims judgment herein is attached hereto as Exhibit "A".

b) i] The judgment sought to be reviewed herein was dated July 9, 1976, and was apparently entered July 9, 1967.

ii] No rehearing has been requested in this case. No request has been

made herein for an extension of time within which to file this Petition.

iii] The Writ requested herein may properly be granted by this Court pursuant to the terms of 28 USC §1255(1).

See U.S. v. Estate of Grace 395 U.S. 316, 318 (1969).

c) On December 12, 1970, Ramirez agreed in writing to extend until June 30, 1972, the period during which a timely assessment could be made of his 1967 income tax. The period would otherwise have expired on April 16, 1971. The Agreement, executed by both Ramirez and the government, was a standard Internal Revenue Service Form 872 entitled, "Consent Fixing Period of Limitation Upon Assessment of Income and Profits Tax," which reads, in pertinent part, as follows:

> [The taxpayer and the government consent and agree] [t]hat the amount of any Federal income and profits taxes due under any return (or returns)

> made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1967 under existing or prior revenue acts, may be assessed at any time on or before June 30, 1972 except that if a notice of a deficiency in tax is sent to the taxpayer (or taxpayers) by certified or registered mail on or before that date, then the time for making any assessment shall be extended beyond that date by the number of days during which an assessment is prohibited and for sixty days thereafter.

On March 14, 1972, Ramirez was sent, by certified mail, a statutory notice of a deficiency in his 1967 income tax. The deficiency was assessed against him on September 4, 1972. Collection was accomplished by compulsorily applying overpayments inadvertently made in respect of later years' taxes (1972 and 1973) in satisfaction of the earlier deficiency.

Subsequently, Ramirez filed a claim with the Internal Revenue Service for refund of that part of his 1967 income tax which had

been collected as a deficiency. The claim, which alleged only that the assessment of the deficiency had been barred by the statute of limitations, was in due course disallowed. Thereafter, a suit in the Court of Claims followed.

On cross motions for summary judgment the Court of Claims held that the assessment of the deficiency against Ramirez was timely and not barred by the statute of limitations.

The sole question presented for review herein is:

WHETHER THE ASSESSMENT OF THE DEFICIENCY IN RAMIREZ'S 1967 INCOME TAX WAS TIMELY?

This question involves the interpretation of the language of IRS form 872 regarding "extension" of the statutory assessment period (and tangentially the interpretation of §6503(a)(1) of the Internal Revenue Code).

d) i] The pertinent provisions of

Internal Revenue Service Form 872 are set forth in ¶c) hereof, above.

ii] §6501(a) of the Internal Revenue Code provides:

> GENERAL RULE.- Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

iii] §6501(b)(1) of the Internal Revenue Code provides:

> TIME RETURN DEEMED FILED.- EARLY RETURN.- For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing

thereof, shall be considered as filed on such last day.

iv] §6501(c)(4) of the Internal Revenue Code provides:

> EXTENSION BY AGREEMENT.- Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

v] §6503(a)(1) of the Internal Revenue Code provides:

> ISSUANCE OF STATUTORY NOTICE OF DEFICIENCY.- GENERAL RULE.- The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and certain

excise taxes), shall after the mailing of a notice under section 6212(a) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

e) See Paragraph c) hereof, above.

f) Inapplicable.

g) Federal jurisdiction in the court of first instance in this case is based upon:

28 USC 1941.

h) This Writ is sought on grounds that:

i] The Court of Claims decision in the instant case is in conflict with the decision of the First Circuit in the case of Hoosac Mills Corp. v. Commissioner 75 F. 2nd 462 (1st Cir. 1935) on the same matter -- see footnote 10 of the Court of Claims decision herein (Exhibit "A"); and

ii] The Court of Claims decision in the instant case -- involving the interpretation of an ambiguous standard form widely used by the Internal Revenue Service -- purports to resolve an important question of Federal law which has not been, but should be, settled by this Court.

This case is one in which certiorari would be particularly appropriate because the facts are both simple and not in dispute and the legal issue involved is both significant and clearly defined.

i) See Exhibits "A" (Court of Claims Opinion) and "B" (IRS ruling) attached.

j) Inapplicable.

WHEREFORE Petitioner prays that this Court grant its Writ of Certiorari to review the judgment of the United States Court of Claims in the instant case.

Dated: September 28, 1976, at

Berkeley, California.

/S/
MICHAEL C. FERGUSON,
Attorney for Frank A. Ramirez

APPENDIX

In the United States Court of Claims

No. 312-75

(Decided July 9, 1976)

FRANK A. RAMIREZ v. THE UNITED STATES

Michael C. Ferguson, attorney of record, for plaintiff. *Rose Anne Featherston*, with whom was *Assistant Attorney General Scott P. Crampton*, for defendant. *Theodore D. Peyser* and *Robert S. Watkins*, of counsel.

Before LARAMORE, *Senior Judge*, DAVIS, and SKELTON, *Judges*.

ON DEFENDANT'S MOTION AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

LARAMORE, *Senior Judge*, delivered the opinion of the court:

In this suit for refund of Federal income tax,[1] plaintiff (hereinafter "taxpayer") contends that the government's assessment of a deficiency in his income tax for 1967 was barred by the statute of limitations. The record does not specifically address the merits of the tax assessed, nor is there any controversy as to the amount of the tax collected. Hence, our consideration is limited solely to the question of whether the assessment was made in a timely fashion. For reasons enunciated below, we hold that it was.

[1] All citations hereinafter made to the "Code," or to sections contained therein, are, unless otherwise indicated, in reference to the Internal Revenue Code of 1954.

214-116—76

EXHIBIT A

The material facts are not in dispute. On December 12, 1970, taxpayer agreed in writing to extend until June 30, 1972 the period during which a timely assessment could be made of his 1967 income tax. The period would otherwise have expired on April 16, 1971.[2] The agreement, executed by both taxpayer and the government, was a standard Internal Revenue Service Form 872 entitled, "Consent Fixing Period of Limitation Upon Assessment of Income and Profits Tax," which reads, in pertinent part, as follows:

> [The taxpayer and ~~the government~~ consent and agree] [t]hat the amount of any Federal income and profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1967 under existing or prior revenue acts, may be assessed at any time on or before June 30, 1972 except that if a notice of a deficiency in tax is sent to the taxpayer (or taxpayers) by certified or registered mail on or before that date, then the time for making any assessment shall be extended beyond that date by the number of days during which an assessment is prohibited and for sixty days thereafter.[3]

On March 14, 1972, taxpayer was sent, by certified mail, a statutory notice of a deficiency in his 1967 income tax. The deficiency was assessed against him on September 4, 1972. Collection was accomplished by compulsorily applying overpayments inadvertently made in respect of later years' taxes (1972 and 1973) in satisfaction of the earlier deficiency.

Subsequently, taxpayer filed a claim with the Internal Revenue Service for refund of that part of his 1967 income tax which had been collected as a deficiency. The claim, which alleged only that the assessment of the deficiency had been barred by the statute of limitations, was in due course disallowed. Thereafter, this suit followed.

---

[2] Section 6501(a) provides, with exceptions not here relevant, that the amount of any tax imposed by the Code shall be assessed within three years after the return reporting such tax was filed. Section 6501(b)(1) provides that returns filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. See also Treas. Reg. § 301.6501(b)-1(a). In the instant case, under section 6072(a), taxpayer's 1967 return was due on or before April 15, 1968. Therefore, the 3-year statute of limitations commenced running on April 16, 1968, and would have expired on April 16, 1971.

[3] Except for the dates December 31, 1967 and January 30, 1972, which were typewritten, all of the language quoted above was in printed form.

Inasmuch as taxpayer grounds his right to recovery upon the sole argument that the assessment of the tax was not effective until after the statute of limitations had outlawed it, logic dictates that we first examine the relevant statute or statutes relating to the limitation of assessments. Section 6501(a)[4] embodies what may be referred to, for Federal tax assessment purposes, as a general statute of limitation. It directs that, unless otherwise provided, the amount of any tax imposed by the Internal Revenue Code be assessed within three years after the date on which the return for such tax was filed. Section 6501(c)(4),[5] however, permits a taxpayer and the government to mutually consent to enlarge, by written agreement entered into prior to the expiration of the natural period of limitation, the time within which any tax, except an estate tax, may be timely assessed.

In the case at bar, taxpayer and the government implemented subsection (c)(4) through the written agreement set out in the paragraph above. The undisputed effect of the language therein used was to extend the expiration date of the statutory period, at the very least, to June 30, 1972. However, were June 30, 1972 an immutable cutoff date, taxpayer would, without more, prevail in this case because the assessment, on September 4, 1972, was made more than two months later. But we note that the agreement contained a proviso which specified that if a notice of deficiency were sent to the taxpayer before that date (meaning June 30, 1972), then the time for making an assessment would be further extended.

---

[4] "SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period."

[5] [Sec. 6501] "(c) EXCEPTIONS.— * * * (4) Extension by Agreement.—Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Such a notice was sent on March 14, 1972. Thus, the precise number of days by which the June 30, 1972 original cutoff date was extended upon the sending of the notice, determined the timeliness *vel non* of the assessment.

Further scrutiny of the agreement is necessary. The formula used in the agreement under which the contractual limitation period was to be extended, incorporated by reference a calculable but unspecified measure. It provided that the time for making any assessment would be extended (after the notice of deficiency was sent) by the number of days during which an assessment would be prohibited, and for 60 days more.

Dual issues are raised by this formula. One concerns the numerical measure used, *i.e.*, the number of days. However, both parties urge that 90 days is the correct figure. In light of section 6213(a),[6] we agree. That section provides (with certain exceptions not relevant here) that where the government issues a notice of a deficiency, the tax may not be assessed until 90 days have expired. Evidently, this period permits the taxpayer time to resist the deficiency, either administratively or by filing a petition in the Tax Court. In any case, 90 days is the proper measure to be incorporated into the agreement, and the time for making any assessment was, thus, to be extended for 90 days and 60 days thereafter, or a total of 150 days.

The other, more debated issue, concerns the manner in which the contractual limitation period was to be enlarged.

[6] "SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

"(a) Time for Filing Petition and Restriction on Assessment.—Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court."

Taxpayer contends that the 150 days was intended to run from the date the notice of deficiency was sent (March 14, 1972) or only until August 11, 1972. This interpretation would bar the September 4, 1972 assessment.

Two subarguments are said, by taxpayer, to buttress this contention. The first is that the phrase "that date," used for the second time in the agreement, referred not to June 30, 1972, but to the date upon which the notice of deficiency was sent. Taxpayer, therefore, takes the position that the phrase "that date" twice used in the agreement, referred to two different dates.

After examining the language of the agreement, we are unable to accept this line of reasoning. It is not reasonable to assert that the phrase "that date", used twice in the same sentence, referred to two separate dates, without any hint that it did in the language itself. The only date set forth in the agreement that refers to the assessment was June 30, 1972. Under the plain wording of the agreement, which belies the construction taxpayer would place upon it, taxpayer's position is patently incorrect, and we need not devote any more time to this facet of his argument.

Taxpayer's second point is that the agreement at bar, and in particular the extension proviso contained therein, must be read not merely in *pari materia* with section 6213(a) of the Code (providing for the 90-day prohibition upon assessment), but also in light of the effect that section could have upon the making of an assessment within a period of limitation extended by agreement. Taxpayer perceives that, in the absence of an automatic extension proviso, the government could find itself in the anomalous position of sending a notice of deficiency near the end of a contractual limitation period and being foreclosed from ever making the assessment because the following 90 days would run past the contractually extended cutoff date. The provisio is said to be designed specifically to avoid this pitfall by allowing the government a 60-day grace period immediately after the 90 days comes to an end.

While this argument of taxpayer has appeal insofar as it signals the *animus* behind the proviso, we think that the taxpayer has, more or less, jumped to the conclusion that a "fair"

construction of the language must allow for only the shortest extension of the contractual limitation period that would assure the government an opportunity to assess in a timely fashion. This is not necessarily so. The rather explicit language of the proviso provides that the 150 days be applied so as to "extend" the contractual limitation period by that amount, and the wording of the proviso admits of no other tenable construction.

In point of fact, at the time the agreement was executed the identical result was already assured by the Code. Section 6503(a)(1)[7] suspends the running of the period of limitations, when a notice of deficiency is sent, for the period during which an assessment is prohibited and for 60 days thereafter. In light of the striking similarity between section 6503(a)(1) and the proviso contained in the agreement, we think the latter was designed to foster the policy underlying the former. That is to say, the section and proviso avoid in the identical manner the pitfall to which taxpayer refers.

Moreover, this is a conclusion we draw not by mere cursory comparison of the corresponding language of section 6503(a)(1) and the proviso. Our research discloses that section 277(b) of the Revenue Act of 1924,[8] precursor to section 6503(a)(1) of the current Code, used the word "extended" to achieve the same effect that "suspended" achieves in the current section of the Code. Apparently, in the Revenue Act

[7] "SEC. 6503. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

"(a) ISSUANCE OF STATUTORY NOTICE OF DEFICIENCY.—

"(1) GENERAL RULE.—The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and chapter 42 taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter."

[8] Section 277(b) of the Revenue Act of 1924, states as follows:

"*The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended* (1) by 60 days if a notice of such deficiency has been mailed to the taxpayer under subdivision (a) of section 274 and no appeal has been filed with the Board of Tax Appeals, or (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board." [Emphasis supplied.]

of 1926, section 277(b),[9] Congress varied the term used to describe the manner under which the limitation period was to be automatically enlarged in certain instances. The 1924 Act provided that the limitation period would be "extended", while the 1926 Act provided that the running of the limitation period would be "suspended." With either of these terms, the manner in which the limitation period was to be enlarged is identical. We find little distinction, for purposes of the instant case, in saying on the one hand that a period is to be "extended" by 90 days and, on the other hand, that the running of a period is to be "suspended" for 90 days. Thus, the change from "extension" to "suspension" in the tax statutes had, for purposes of our analysis, no apparent effect on the manner in which the enlargement was to be applied.

In *Continental Oil Co.* v. *United States*, 83 Ct. Cl. 344, 14 F. Supp. 533, *cert. denied*, 301 U.S. 694 (1936), after quoting from both statutes, we applied the formula of the 1926 Act by taking the original period of limitations, allowing a number of days of suspension during which the period was tolled, and then at the end adding the unexpired period. It is readily apparent that if the term "extended" had been used, the same effect would have been achieved.

This analysis of the legislative switch from "extended" to "suspended" suggests that because no change in effect was intended, a prior opinion of this court which has already construed the use of "suspended" in a context similar to the case at bar, should be helpful and persuasive in our effort to treat the proviso's use of the word "extended." In *Olds & Whipple, Inc.* v. *United States*, 86 Ct. Cl. 705, 724, 22 F. Supp. 809, 819 (1938), the court stated:

> * * * [*T*]*he Commissioner is entitled, in making the assessment of a deficiency determined by the Board, to use the sixty-day period together with any unexpired portion of the statute of limitation remaining at the time*

[9] Section 277(b) of the Revenue Act of 1926, provides in part:

"*The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended* for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter." [Emphasis supplied.]

> *it became suspended by the mailing of the deficiency notice.* We think the language of the statute is not reasonably susceptible to any other construction. It plainly states that the running of the statute of limitation shall be suspended and this can only mean that when the period of suspension ceases the limitation period again commences to run. [Emphasis supplied.]

And the court summarized this point, *Id.* at 725, 22 F. Supp. at 819:

> * * * Upon our interpretation of section 277(b) of the Revenue Act of 1926 as amended and section 277 of the Revenue Act of 1928, the statute of limitation *as extended by the suspended period* did not expire as to * * * [the years in question, prior to the date of the assessment.] [Emphasis added. Note the juxtaposition of the words "extended" and "suspended".]

The result of "tacking" reached by the court in *Olds & Whipple, Inc., supra*, under section 277(b) of the Revenue Act of 1926, is no different than that mandated by the express language of the agreement and proviso presently under consideration.

On the facts of this case, a statutory notice of deficiency was sent to taxpayer on March 14, 1972, and under section 6213(a), as mentioned above, no assessment of the deficiency in taxes could have been made for 90 days. Therefore, under the express terms of the agreement, and the proviso contained therein, the period during which the government could properly assess a tax deficiency was extended 90 days beyond the June 30, 1972 original cutoff date, and for 60 days thereafter, or, until November 27, 1972. The assessment, made on September 4, 1972, was therefore within the period of the extension provided for by the proviso in the agreement.

Finally, one further wrinkle needs to be covered. While our consideration of this case has been aimed, and the briefs of the parties have been directed, toward a construction of the subject agreement and the automatic extension proviso contained therein, we cannot neglect to note that the same result would have been reached merely by pointing to section 6503(a)(1) which, itself, suspends the running of the period of limitations.

Section 6503(a)(1) applies to the "* * * running of the period of limtations provided in section 6501 * * *." Since the agreement entered into between the parties was clearly done under authority of section 6501(c)(4), the extended contractual period of limitation was as much a "period of limitations provided for in section 6501" as was the otherwise controlling general 3-year period provided for in section 6501(a). Consequently, upon the mailing of the notice of deficiency by the government, section 6503(a)(1), on its own, suspended the extended contractual period of limitation for the same 150 days and, without the aid of the automatic extension proviso in the agreement, the assessment would have been timely in any case.[10]

Accordingly, for the foregoing reasons, defendant's motion for summary judgment is granted, plaintiff's cross-motion is denied, and the petition is dismissed.

---

[10] This second interpretation of the case, like the first one based upon the effect of the automatic extension proviso, relies upon both *Continental Oil Co.* v. *United States, supra*, and *Olds & Whipple, Inc.* v. *United States, supra*. In doing so, both interpretations specifically adhere to the "tacking" principle mentioned, where under either the extension agreement or section 6503(a)(1) the period during which an assessment is prohibited and 60 days more is "tacked" on to the limitation period. To the extent that *Hoosac Mills Corp.* v. *Commissioner*, 75 F. 2d 462 (1st Cir. 1935), cited by taxpayer in the instant case, departs from this formula, we decline to follow it. *Accord, Aura Grimes Bales* v. *Commissioner*, 22 T.C. 355 (1954). *See also, Olds & Whipple, Inc.* v. *United States, supra*, at 724, 22 F. Supp. at 819.

U.S. GOVERNMENT PRINTING OFFICE: 1978

Department of the Treasury

District Director
Internal Revenue Service

Date: February 11, 1975

In reply refer to: L-93, Code 431

RECEIVED
FEB 13 1975
MICHAEL C. FERGUSON
ATTORNEY AT LAW

Michael C. Ferguson
Attorney-At-Law
2000 Center Street, Suite 206
Berkeley, California 94704

RE: Frank A. Ramirez
SS 084-32-3529

Kind of Tax: Income
Tax Period Ended: 12-31-67
Amount of Claim: $763.00

Dear Taxpayer:

We have examined your claim and propose the following:

☐ Partial disallowance, as shown in the enclosed report.

☒ Full disallowance, as shown on the back of this letter.

☐ Full disallowance, additional tax due as shown in the enclosed report.

If either of the first two boxes is checked and you accept our findings, please sign and return the Acceptance Form on the back of the enclosed copy of this letter. Also, please sign and return the enclosed Waiver of Statutory Notification of Claim Disallowance, Form 2297. If the third box is checked and you accept our findings, please sign and return the Form 2297 and a copy of the report.

If you do not accept our findings, you may do one of the following within 15 days from the date of this letter:

1. Mail us any additional evidence or information you would like us to consider.

2. Request a discussion of our findings with one of our employees who is familiar with your return. At that time you may submit any additional evidence or information you would like him to consider. If you plan to come in for a discussion, please phone or write us in advance so that we can arrange a time and place that is convenient.

EXHIBIT B

(OVER)

Form L-83 (Rev. 5-71)

3. Request a conference with a member of our conference staff. The conferee will be someone who has not examined your return. However, if the examination was conducted entirely by correspondence, we would appreciate your first discussing our findings with one of our employees who is familiar with your return.

The enclosed instructions concerning unagreed cases explain your appeal rights.

If we do not hear from you within 30 days, we will have no alternative but to process your case on the basis of the information we have. If you write us about your case, please use the above address and refer to the symbols in the upper right corner of this letter. A self-addressed envelope is enclosed for your convenience.

Thank you for your cooperation.

Sincerely yours,
District Director

Enclosures:
☐ Examination Report
Copy of this letter
Form 2297
Instructions
Envelope

Based on all available information, the additional tax was properly assessed in accordance with the applicable statutes.

ACCEPTANCE—I accept the findings shown above or in the report and agree to the disallowance of my claim to the extent proposed in such findings.

If a joint return was filed, both husband and wife should sign this acceptance.

SIGNATURE OF TAXPAYER	SIGNED	DATE
	SIGNED	DATE

(OVER)

Form L-93 (Rev. 5-71)

Address any reply to: P.O. Box 36040 San Francisco, Calif. 94102

Department of the Treasury

District Director

Internal Revenue Service

Date: April 17, 1975 | In reply refer to: FL-1452, Code 440

RECEIVED
APR 21 1975
MICHAEL C. FERGUSON
ATTORNEY AT LAW

Frank A Ramirez
645 Stagg Lane
Santa Cruz, Ca 95060

CERTIFIED MAIL

Social Security Number or Employer Identification Number: 084 32 3529
Document Locator Number: 9425124812801
Type of Tax: 1040
Period Ending: 1967
Amount Claimed: $763.00
Date Claim Received: Oct. 17, 1974

Dear Taxpayer:

We have examined your claim for an adjustment of your taxes. I am sorry to tell you that we cannot allow your claim for the reasons stated below. This decision rests on certain provisions of the internal revenue laws and regulations.

This letter is your legal notice that your claim is disallowed in full.

If you wish to begin suit or proceedings for the recovery of any taxes, penalties, or other moneys for which this notice of disallowance is issued, the law requires you to do so within 2 years from the mailing date of this letter.

Sincerely yours,

J. L. Brownlee

District Director

Reasons for disallowance: Per audit determination.

FL-1452 (10-73)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

FORM **2297**
(REV. JULY 1970)

WAIVER OF STATUTORY NOTIFICATION OF CLAIM DISALLOWANCE

I, Frank A. Ramirez *(Name)* of 645 Stagg Lane, Santa Cruz, Ca. 95060 *(Number, Street, City or Town, State, ZIP Code)*

waive the requirement under section 6532(a)(1) of the Internal Revenue Code that a notice of claim disallowance be sent to me by certified or registered mail for the claims for credit or refund shown in column (d) below.

I understand that the filing of this waiver is irrevocable and it will begin the two-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

CLAIMS

(a) TAXABLE PERIOD ENDED	(b) KIND OF TAX	(c) AMOUNT OF CLAIM	(d) AMOUNT OF CLAIM DISALLOWED
12-31-67	Income	$763.00	$763.00

SIGNATURE INSTRUCTIONS

If a joint return was filed for any years covered by this waiver, both husband and wife must sign this waiver unless one, acting under a power of attorney, signs as agent for the other.

This waiver may be signed by an attorney or agent of the taxpayers provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) authorized to sign.

TAXPAYER SIGN HERE → ..... *(Date signed)* .....

IF JOINT RETURNS, TAXPAYER'S WIFE SIGN HERE → ..... *(Date signed)* .....

TAXPAYER'S REPRESENTATIVE SIGN HERE → ..... *(Date signed)* .....

CORPORATE NAME: .....

(The Internal Revenue Service do not require a seal on this form, but if one is used, please place here.)

CORPORATE OFFICERS SIGN HERE

..... *(Title)* ..... *(Date signed)* .....

..... *(Title)* ..... *(Date signed)* .....

NOTE– Filing this waiver within six months from the date the claim was filed will not permit filing a suit for refund before the six-month period has elapsed unless a decision is made by the Service within that time disallowing the claims.

* GPO : 1972 O - 103-238

FORM **2297** (REV. 7-70

Supreme Court, U. S.
FILED
NOV 29 1976
MICHAEL RODAK, JR., CLERK

No. 76-482

In the Supreme Court of the United States

OCTOBER TERM, 1976

FRANK A. RAMIREZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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FRANK A. RAMIREZ, PETITIONER

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the decision of the Court of Claims in this income tax case construing his written agreement to waive the statute of limitations for assessment of taxes and holding that the Commissioner's assessment against him was timely. It is undisputed that if the assessment was timely, petitioner is liable for the tax.

The pertinent facts are as follows: On December 12, 1970, petitioner signed a written agreement form to extend until June 30, 1972, the period during which the Commissioner could make a timely tax assessment for 1967. Without this agreement, the period of limitations would have expired on April 16, 1971, in accordance with Section 6501(a) of the Internal Revenue Code of 1954 (26 U.S.C.), which generally provides a three-year period of limitations for assessments. The waiver agreement signed by petitioner provided in part as follows (Pet. 3):

> [The taxpayer and the government consent and agree that] * * * [additional taxes] may be assessed at any time on or before June 30, 1972 except that if a notice of a deficiency in tax is sent to the taxpayer (or taxpayers) by certified or registered mail on or before that date, then the time for making any assessment shall be extended beyond that date by the number of days during which an assessment is prohibited and for sixty days thereafter.

On March 14, 1972, the Commissioner of Internal Revenue sent petitioner a notice of deficiency; on September 4, 1972, he assessed the additional taxes in issue and thereafter collected them (Pet. App. A 2).

1. Petitioner agrees that under the waiver agreement, the June 30, 1972, limitation date was extended as a result of the issuance of the notice of deficiency. It is also undisputed that the extension was for 150 days.[1] The only question is when the 150-day period began to run.

Petitioner contends (Pet. 3-4) that the period began to run on March 14, 1972, when the notice of deficiency was issued, thus extending the period to August 11, 1972. If this is the correct date, the September 4, 1972, assessment would be barred. The Court of Claims upheld the government's contention that under the waiver agreement, the 150-day period began to run on June 30, 1972, so

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[1]As the Court of Claims noted (Pet. App. A 4), assessments are generally prohibited for 90 days following the issuance of a notice of deficiency (see Section 6213(a) of the Code). The 150-day period referred to above is the sum of this 90-day period and the 60-day period referred to in the waiver agreement.

that the limitations period was extended to November 27, 1972. Accordingly, the September 4, 1972, assessment was timely.

The Court of Claims correctly construed the waiver agreement. That agreement extends the time for assessment to June 30, 1972, and provides for an extension of "that date" for the 150-day period established under the agreement if a notice of deficiency is issued. The Court of Claims concluded that the term "that date" refers not to the date the deficiency notice was issued but to June 30, 1972. The court properly relied on the fact that the term "that date" is contained a second time in the same sentence of the waiver agreement in which it unmistakably refers to June 30, 1972. The court further noted that June 30, 1972, is the only date specified in the agreement (Pet. App. A 5).

Petitioner's construction of the agreement would accord two different meanings to the term "that date" in the same sentence. Since the agreement does not expressly support such an anomalous interpretation, the Court of Claims correctly held that the statute of limitations was extended until November 27, 1972, 150 days after June 30, 1972, and that the assessment made on September 4, 1972, was timely.

2. Contrary to petitioner's assertion (Pet. 7), the decision of the Court of Claims does not conflict with *Hoosac Mills Corp.* v. *Commissioner*, 75 F. 2d 462 (C.A. 1). There, the taxpayer signed a waiver agreement extending the statute of limitations to December 31, 1926, with a proviso that "said date" should be extended by a certain period if a notice of deficiency were issued and the taxpayer appealed to the Board of Tax Appeals. Thereafter, the Commissioner sent a timely notice of deficiency and the taxpayer appealed to the Board. As

the Court of Claims held here, the court in *Hoosac Mills* similarly computed the additional limitations period from the original December 31, 1926, limitations date set by the waiver agreement, and not from the date when the deficiency notice was issued. Thus, in this respect, *Hoosac Mills* supports, rather than conflicts with, the decision below.

Since the assessment in *Hoosac Mills* was not made until after the date so computed (April 9, 1932) under the waiver agreement, the court also considered whether Section 277(b) of the Revenue Act of 1926, 44 Stat. 58, (now Section 6503(a)(1) of the 1954 Code), might have affected the "plain language of the waivers" (*id.* at 463). That statute provides for a statutory suspension of the limitations on assessments in cases where a notice of deficiency is issued. The court held that where the period of limitations is extended by a waiver agreement and a notice of deficiency is issued, thereby suspending the running of the limitations period for a specified time, the limitations period may not be further extended by adding the unexpired portion of the limitations period onto the end of the suspension period.

Unlike *Hoosac Mills*, the assessment here was timely under the date computed under the waiver agreement. Thus, this case does not involve the statutory suspension of the running of limitations period considered in *Hoosac Mills*. While the Court of Claims indicated that it would not follow *Hoosac Mills* had a Section 6503(a)(1) question been presented (Pet. App. A 8-9), that expression of disagreement does not present a conflict of decisions warranting review by this Court.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.

DOJ-1976-11